

## Joint City Council/Port Authority Meeting UNAPPROVED MINUTES

Joint Council Port # \_\_\_/11a  
Tuesday, July 22, 2014, 5:30 PM  
Bloomington Civic Plaza  
1800 West Old Shakopee Road  
Bloomington, Minnesota 55431-3027

**Item #1**  
**Call to Order Council**

Mayor Gene Winstead called the City Council meeting to order at 5:30 p.m.

President Robert Erickson called the Port Authority meeting to order at 5:30 p.m.

**Call to Order Port**

*Council Present:* Mayor Winstead; Council Members J. Baloga, C. Bemis Abrams, T. Busse, A. Carlson, D. Lowman and J. Oleson

*Council Absent:* None.

*Port Authority Present:* President R. Erickson; Commissioners T. Busse, C. Carey, C. Hunt, R. Lunz, and G. Winstead

*Port Authority Absent:* Commissioner T. Keller

*Staff:* Mark Bernhardson, City Manager  
Schane Rudlang, Port Authority Administrator  
Lori Economy-Scholler, Chief Financial Officer  
Larry Lee, Director of Community Development  
Sandra Johnson, City Attorney  
Becky Schindler, Port Authority Development Specialist

*Also Present:* Julie Eddington, General Counsel Port  
Martin Walrath, Triple Five Group  
Bill Griffith, General Counsel for MOA  
Kurt Hagen, MOA

**Item #3.1**  
**MOA Phase 1 Mortgage**  
**Refinancing Consider**  
**Waiver of 60-day Notice**

Rudlang explained the purpose of this evening's meeting is for the two Boards to consider a waiver request by the Mall of America (MOA) for Phase 1 financing which is contractually required. Rudlang reviewed the South Loop Plan Goals and the issues and objectives of this request. The City's policy is to base this decision in context to long-term viability of MOA since this new mortgage increases the debt service substantially beyond that needed to refinance the current principal. He explained MOA and Triple 5 plan to refinance the existing mortgage which matures in 2016 and to lock in an interest rate. This refinancing would also allow asset value available today. Continued development of subsequent phases would occur with limited equity investment. Rudlang also reviewed the City and Port's objectives including prudent investment of public funds to achieve public goals ahead of market for transformational development and to ensure long-term viability of MOA. Rudlang reviewed the MOA's financial history and public investment ratio. He explained the MOA's estimated Tax Increment Financing and Fiscal Disparities cash balance reporting in 2018 shows an anticipated balance of \$97.7 million. He further reported this proposed refinancing does not include Radisson Blu or the Phase 1C projects; only the original MOA Phase 1. The public investment ratio in the Restated Contract originally had a front loaded public investment ratio. With the South Pad and 1-C projects, the ratio went up to slightly higher than 10 percent cumulatively. Rudlang indicated the City Council and Port Authority have talked about a level of investment that is higher than 10 percent. They

discussed a 14 percent range and if that occurs, it will be up to these two Boards to discuss that in future meetings.

Rudlang reviewed the loan details with the proposed refinancing to be \$1,400 million at an estimated interest rate of 4.38 percent for a 12-year term. Payment details include six years interest only, then six years with principal and interest amortized over 30 years. The estimated annual debt service is \$61.3 million for the first six years then \$83.9 million starting in year seven. The original loan to value ratio is less than 65 percent with the defeasance at \$88 million (plus \$8-\$10 million in closing costs). Rudlang explained the property tax impact on the net operating income (NOI) would decrease.

President Erickson said one of his concerns is the effect the refinancing will have on the debt service and property taxes. An increase in property taxes would impact the operating income. If the Mall's NOI is above debt service everything is okay but in some years if the NOI is below debt service there is a problem resulting in a lack of funds to pay the debt service or capital expenses. This refinancing proposal does increase the amount of risk the Mall is taking on.

Rudlang reviewed staff's concerns with this proposed refinancing stating added debt service could affect the ability to reinvest into the MOA, especially in a downturn. Although NOI growth has increased historically, E-Commerce and other factors could change that and if future property taxes increase it will impact future NOI and could further affect reinvestment into MOA. Rudlang reviewed recapture and the contract notice provision. He explained the notice expires August 16 and the Mall intends to close on this refinancing prior to that date. Without the waiver, a technical default would occur. This would not default the contract provision and most of the contract would still be in effect.

Rudlang explained staff's recommendation is that both Boards adopt a resolution granting a waiver of the 60-day notice requirement conditioned on Triple5/MOA completing the following three requirements within one year with the proceeds of the refinancing:

- (1) They must replace the Met Center site mortgage releasing external encumbrances including those related to the Las Vegas entities and to not further encumber the property for any purpose other than the development of the Mall of America in Bloomington.
- (2) Purchase the adjoining lands from the Metropolitan Airports Commission which provides needed additional parking and construction staging for all phases of MOA.
- (3) Undertake construction of the Phase 1C office to be complete by 2016.

Rudlang reported MOA does not oppose the items listed above; however, they do not want them as conditions for approving the waiver.

Martin Walrath, Executive Vice President, Corporate Finance, Triple Five Group, said they believe the success of the Mall today encourages continued cooperation between the City and Triple 5 moving forward. Triple 5 believes the best of the Mall is still ahead and they have shared that vision with the City in the past and continue to share that vision moving forward. Walrath explained in 2006 Triple 5 had the opportunity to exit the Mall with \$200 million in their pocket. Rather than take that money, the Ghermezian family came in with partners and took over the day-to-day control of the Mall. Since then, they have invested over \$100 million in renovations to the Mall and a similar amount will be invested in coming years. Triple 5 has demonstrated a commitment to put capital into the Mall to improve its performance. Walrath explained Phase 2 development shows Triple 5 and the Ghermezian family is committed to further development. He stated over the years City staff has had concerns with regard to Triple 5 and its role at the Mall. Those concerns overall were the financial health and stability of Triple 5 and the very possibility of whether or not the Mall can be refinanced in the future and specific collateral mortgage placed on the Met Center land. This impending refinancing resolves each of those

concerns and Triple 5 believes this action should provide considerable comfort to both the Port Authority and City in that they address the City's concerns. Triple 5 is a private company and do not access equity capital. Also, they are not subject to the whims of equity capital markets. There is no question of the ability to refinance. This is not a done deal and they are at risk every day that the financing does not close due to an event that could occur that would disrupt capital markets. There is a motivation to close this financing to eliminate real business risk. They are subject to interest rate fluctuation and to the whim of the lender to withdraw their term sheet. The lender and borrower are highly motivated to expedite the closing. Walrath said it is highly likely that they will be in a position to close financing prior to August 16, therefore, their request for the waiver is a significant request. They provided the City notice on the day they executed the term sheet. Walrath reported they did not exercise the maximum amount of financing the providers offered them which suggests prudence on their part. This proposal reduces the pressure for refinancing at a later date by lowering the actual principal amount and this will be a fixed rate financing. The proposed financing cost \$88 million today versus waiting 90 days before maturity in 2016. It is expensive but is a reasonable insurance policy to pay to know the Mall is well capitalized and well financed for the next 12-year period. This issue will also remove the mortgage collateral portion on Phase 2 and will allow for substantial capital investment in the existing Mall and subsequent phases of the Mall. Moving forward will assure them of the availability of capital. There will be some excess level of funds that will go to the developer and Triple 5 is committed to its financial strength going forward. Walrath said they are asking the City and Port to waive the 60-day period with respect to the financing so they can close the first day they are able to close.

Commissioner Hunt asked if for some reason this request is not approved and a technical default occurs, how the proposed financing would be impacted. Walrath responded they have not looked into this and are not sure how it would be affected.

Bill Griffith, Attorney for Mall of America, explained the partners in his law firm have concerns with the specific conditions listed in this waiver and believe they cannot sign a clean opinion letter stating there is no conflict. He indicated the developer agrees with the three conditions. The problem is that those conditions are tied to the waiver and creates a flag on the private financing transaction. By attempting to impose conditions on the notice provision, they are creating the appearance of conflict. Griffith further explained the number one priority of the City has been to have the lien removed from the Met Center site. The developer agrees with this but imposing these conditions can actually make it more difficult to achieve the three objectives the City outlined which they agree with. Griffith suggested they impose the conditions outside of the contract rather than on the notice provision which makes it more difficult to achieve. He said they need to resolve this issue with a clean waiver of that burden. If they don't and something happens there is a risk to everyone. To continue a track record of building this project they need a clean waiver otherwise it becomes a reportable incident and makes it difficult to provide an opinion.

Kurt Hagen, MOA, explained they are doing the refinancing now because they don't want to miss an opportunity that creates many positives for both Triple 5 and the City. They have invested a significant amount of capital into this project. A lower cost of debt and secure loan term financing gives the project financial stability. This clearly demonstrates a commitment to the Mall. A significant amount of reinvestment will go into the project. This financing allows a continuance of the reinvestment. They do not believe there are reasons for placing conditions on the waiver. They are ready to move forward with Phase 2 and not risk progress. They are asking the City to give them a clean waiver of the 60-day notice requirement.

Mayor Winstead stated the conditions seem to be of concern and he does not believe the waiver itself is the problem. They have worked together over the years and as they move forward these are the City's concerns. The conditions are there and they provide the opportunity for discussion. Mayor Winstead asked if there is a way Triple 5 can assure the City that these things will occur as they go forward. He questioned if there is a way to put these conditions into some form of an

agreement. He said he does not believe the use of proceeds or capital that comes out of the refinancing transaction is necessarily a concern of the lender. If there is some way Triple 5 can assure the City that these things will occur, he would suggest they remove them as conditions to the waiver.

Griffith said they would be happy to put in writing those conditions are their intentions. To sign an agreement would be an overstatement. Mayor Winstead suggested this is something the City's attorney could also consider.

Bernhardson said it would be one thing if they were just refinancing \$755 million and reducing their loan term debt but to go to the extent of issuing \$1.4 billion of debt does escalate the debt service and this causes concern. He explained the reason for any conditions is because they want to make sure the things the developer say they are going to do are things they do and to accomplish that is to place conditions on the waiver. Ultimately, if Triple 5 does not agree, it could result in a technical default. Bernhardson said there may be a better place to put these conditions than on the waiver. Perhaps the next time the Mall comes in for public financing the City could determine if they performed on these things as they said they would. Bernhardson said his concern is that if they didn't discuss these issues at this point the developer could say they never told us and the City never expressed these concerns. Bernhardson indicated another concern is the issuance of \$1.4 billion of financing for a \$755 mortgage. People who opposed the Fiscal Disparities contribution to the project may have concerns with the significant amount of money being used for a private investment and the developer not committing to reinvestment.

Bernhardson said they need to decide how to proceed and he would recommend if each Board wants to grant the waiver they pass a resolution separate from this waiver stating the items they want to accomplish and take those concerns into account the next time the Mall asks for public financing. Bernhardson indicated the real issue is what Triple 5 is going to do with the proceeds of this refinancing and how the things these Boards want done can be carried through. He said the best way to do that ties in with the next opportunity the Boards have in reviewing Triple 5's request for public financing. Bernhardson said he would recommend if each Board wants to grant the waiver the Boards adopt a resolution separate from this waiver stating certain items that they want to see accomplished and take those concerns into account the next time the developer asks for public financing.

Griffith said the only issue they have is that they be granted a clean waiver. The conditions suggested are where they may go in the future. Triple 5 understands what the City's objectives are for Phase 2 and they will document this. He indicated the best message to send to the financing markets is a transaction that does not show unreasonable risk and a clean waiver. Any unnecessary negativity surrounding their relationship with the City works against that.

Mayor Winstead said timing is very prudent in the refinancing and to do it now rather than in 2016 is a good idea. He said this is a good opportunity to discuss what the City wants to see accomplished and to put them as conditions on the waiver is a good way to bring these concerns forward.

Griffith explained having control of the adjoining lands from the Metropolitan Airports Commission is strategic to not just the Mall expansion but to the City as well. That will remain under control of the developer.

President Erickson said he is having difficulty in understanding why they have to have a separate resolution as suggested. They have laid out their term of conditions for going forward and it is very important they take time to consider these decisions. The proposed resolution would state these are things the Port Authority and City Council want considered for any future improvements that are to be done. President Erickson said he does not see how this would negate the waiver. This is not an agreement but a statement of expectations.

Hagen explained they cannot move forward with Phase 2 of the project without the adjoining lands and they fully intend to acquire the Kelley site. With regard to construction of the office building, they intend to order the steel for the project within a few weeks. The office building is on spec and they are moving forward because it is a good project for the MOA.

Mayor Winstead said he is looking forward to Triple 5 saying they will do these things voluntarily and for them to make assurances to the City that those are things they are going to do including building office space and executing a MAC land agreement. Griffith explained there is no conflict unless the City uses the waiver process to wrangle out commitments. However, to express the City's wishes in a memo, report or resolution does not rise to the level of conflict. To work out assurances or commitments this evening will cause conflict which becomes reportable. Griffith said there are many ways to communicate the intention of the developer and the City's desires to be sure things are accomplished.

Council member Carlson said they have been talking about risk and commitments. He questioned if the risk is greater to negotiate with the developer now or to wait after the 60-day waiver period and asked which one process caused risk. He said if the developer's wish is to have a clean waiver and the City's desire is to include the three conditions, this is an opportunity for them to meet somewhere in the middle. Carlson said he does not believe a bank lending the developer \$1.4 billion is going to find this as a conflict.

Commissioner Lunz asked how an opinion letter making this a reportable event would fault the developer. Griffith explained the City's legal position is that this is a notice only provision to look at the terms of financing. There is no event or legal position that allows the City to slow down this transaction. If the City takes this position they do not have the legal basis to do so and this results in a conflict. Griffith said the developer has said in writing they intend to remove the lien. They have also assured the City in writing and this evening that they are going to hold onto the adjoining land. One of the reasons they have not purchased the property is because they may not be able to reach an agreement on an amendment to the contract. Even though they have a spec plan for the office building and plan to order steel in a couple of weeks, they cannot enter into a binding agreement. They can only give the City assurances in writing and verbally. They are not going to negotiate a binding agreement and what they are discussing this evening is a notice provision.

City Attorney Johnson said if the two Boards should desire to do so and support the staff's recommendation; this is something they could put in as part of the Revised Master Development Agreement. She said they do not know if all Board members agree with the staff report but these items could be considered when negotiating financing.

Council member Oleson said he would expect to see these conditions included in future discussions about financing for the Mall. He said this evening's discussion puts the pressure on the developer. A formal resolution which talks about future events and future financing may not be required since this is a public meeting and the things being said this evening present a moral commitment by the developer.

Council member Busse asked when lenders look at this recommendation without conditions and they see this discussion, would that come into play. Griffith explained the level of discussion that has occurred at this point has not gone up to outside counsel. He indicated he is not terribly concerned at this point but is concerned about anything that says they have a conflict that they can't resolve. That is why they have been so insistent in having a clean waiver. If they do not agree to a clean waiver there will be consequences. Griffith said he does not understand the rationale for that since they have provided all of the information requested by staff. Council member Busse asked if there is anything in between they could do. Perhaps they could adopt a resolution or memo of understanding including staff's recommendation.

Hagen said to move forward they need an amendment to the Restated Contract for Phase 2 of the project. This amended contract should include the important points of the City and Port Authority. Hagen said he believes this is a more appropriate location for Phase 2 conditions; in the Phase 2 contract.

Rudlang suggested the Council and Port Authority recommend that they want the three conditions listed as part of the Restated Contract negotiations. This way staff will know that the Boards are interested in these things and give staff direction in negotiations. However, the Boards can approve a conditional waiver which would reduce the City's amount of risks.

Mayor Winstead said he is comfortable in moving forward with an unconditional waiver and discussing the three conditions with Triple 5 and the Mall when a new contract is negotiated. Walrath said they would be sure to address the City's concerns. Mayor Winstead indicated the City has legitimate concerns. When staff put these conditions forward it gave them the opportunity to bring these issues forward and to tie them down more. The City Council and Port Authority do not want to obstruct this financing but these are the City's concerns and now everyone is aware of them. Hagen said this is clearly understood.

President Erickson said he does not see this discussion as negative but as critical input for a major project. It also provides them the opportunity to communicate their concerns with the developer. He said it is critically important they have these discussions and these things will only happen if they have candor. President Erickson said going forward this is critically important and he would be supportive of adopting an unconditional waiver.

Commissioner Lunz said he agrees with the Mayor and President Erickson. The risk has to be shared between the City and Triple 5.

Commissioner Carey said she could support a clean waiver but would like additional future conversation about the three conditions. They may or may not be the highest priority when it comes time to discuss contract amendments.

Council member Carlson said he was looking for a little more negotiation but is satisfied with the conversations about these three items. Since he does not have the history that others do, he is somewhat neutral on this subject. Council member Carlson said he is looking to future conversations and negotiations and feels this project is a wonderful asset to the City.

Council member Baloga said he is more supportive of this proposal on a clean basis. It appears they are all sitting here thinking this is a done deal and yet it may not occur because of something in the market. He encouraged everyone to move forward with this refinancing. Council member Baloga said this proposal has his complete support and he wants a clean waiver without conditions. He indicated at the end of the day this is a partnership and if they are really not partners in this deal then they don't have the right deal. They have to work together for each parties benefit. Council member Baloga said Condition #3, construction of the Phase 1C office, could be a financial impediment to their partner if it forces them to do something that is not financially feasible. He supports this and encourages them to move forward with all due haste on the contract amendment and this evening they should set a time objective for when it needs to be completed. Phase 2 won't occur until they have a contract in place.

Commissioner Hunt said she would support moving forward without the conditions being placed on the waiver. However, anticipating the completion of the office building by 2016 as a speculative project is not in her comfort zone and she wants to be sure they address these items further.

Council member Bemis Abrams said she is in support of the clean waiver and they should move forward as quickly as possible. This evening's discussion has been a healthy dialogue so if there are questions regarding the fiscal disparities contribution they will see that the City has put forth

the most important factors in the next steps to move forward and will see the priorities the City has brought forth that will happen at the appropriate time. Council member Bemis Abrams said if they had not had this discussion they would have been derelict in their duties.

Council member Lowman said he agrees with Council member Baloga with regard to getting an amended agreement in place. He asked how the City Manager sees this happening. Bernhardson responded he understands the reason for wanting to move forward with an amended agreement and he is a strong proponent of moving forward with the contract since this places the Port Authority and City Council in a better position. However, it appears the developer is only interested in moving forward when there is a development happening and it is not beneficial to the City and Port Authority when they are under a time pressure. Bernhardson said he is not sure they should set a time limit on getting an amended contract in place. They will have to negotiate a full next phase contract for the next phase of the Mall. Phase 2 will be developed in several steps and it may be appropriate to do so in one master contract. They need to wait and see how this all evolves. It is probably in the City's and Port Authority's best interest to wait until the Mall's next proposal.

Hagen said he believes the framework for the contract has been worked out and discussed. It is important for the Mall to have a master contract in place which still allows for an analysis phase by phase so they don't have a blanket ratio. They need certainty to talk to potential developers and tenants.

Mayor Winstead explained there are some things they need to keep moving forward on and have conversations with the Mall as to who the prospective tenants will be or what the uses will be.

City Council Motion:

Motion was made by Winstead, seconded by Baloga and all members voting aye, to adopt a resolution approving a waiver of Section 6.7 of the 2012 Master Redevelopment Contract between the City of Bloomington, Bloomington Port Authority and MOAC Mall Holdings, LLC and MOAC Land Holdings LLC. The motion carried, 7-0.

Port Authority Motion:

Motion was made by Carey, seconded by Hunt, and all members present voting aye, to adopt a resolution approving a waiver of Section 6.7 of the 2012 Master Redevelopment Contract between the City of Bloomington, Bloomington Port Authority and MOAC Mall Holdings, LLC and MOAC Land Holdings LLC. The motion carried, 6-0.

**Adjournment**

The City Council meeting was adjourned at 7:33 p.m.

The Port Authority meeting was adjourned at 7:33 p.m.